

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHELSEA CONKLIN,

Plaintiff,

Case No. 23-
Hon.

v.

GRAND TRUNK WESTERN
RAILROAD INCORPORATED,

Defendant.

PHILLIP S. SERAFINI (P45085)
DARREN K. LEGATO (P77203)
SERAFINI, MICHALOWSKI, DERKACZ
& ASSOCIATES, P.C.
Attorneys for Plaintiff
44444 Mound Road, Suite 100
Sterling Heights, MI 48314
(586) 264-3756 / (586) 265-3783 (f)
phils@smdalaw.com
darren@smdalaw.com

PLAINTIFF'S COMPLAINT

1. That Plaintiff, CHELSEA CONKLIN, is a resident of the County of Kent, State of Michigan.
2. That Defendant, GRAND TRUNK WESTERN RAILROAD INCORPORATED (hereinafter "GRAND TRUNK"), is a citizen of the State of

Delaware and a citizen of Montreal, Quebec, Canada in that its state of incorporation is Delaware and its principal place of business is Montreal, Quebec, Canada.

3. This Court has original diversity subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332 in that it is a controversy between citizens of different states and the amount in controversy, before any assessment of costs, interest, and/or attorney fees, is in excess of \$75,000.00.

4. On September 17, 2020, and for a considerable period of time prior thereto, Defendant, Grand Trunk, owned a set of railroad tracks which generally ran in a north/south direction, and which contained a public grade crossing over Watkins Road, a public street, near Renton Road in Calhoun County, Michigan.

5. On September 17, 2020, Plaintiff, Chelsea Conklin, suffered serious injuries and damages including a serious impairment of body function when she drove her motorcycle at a safe and reasonable speed eastbound on Watkins Road into the public grade crossing located near Renton Road in Calhoun County, when she lost control of her motorcycle because the rail and the pavement immediately adjacent to the rail at said public grade crossing were unreasonably and unsafely at different levels causing Plaintiff, Chelsea Conklin, to be thrown from her motorcycle.

COUNT I - NEGLIGENCE

6. Plaintiff incorporates by reference paragraphs 1 – 5 as if fully restated herein.

7. On September 17, 2020, Defendant, Grand Trunk, owed Plaintiff, Chelsea Conklin, a statutory duty under Michigan law pursuant to MCL § 462.309(1) to maintain, renew, and repair that portion of Watkins Road that lies between the rails of the aforementioned public crossing as well as at least one foot of that portion of Watkins Road that lies outside the rails.

8. On September 17, 2020, Defendant, Grand Trunk, owed Plaintiff, Chelsea Conklin, a statutory duty under Michigan law pursuant to MCL § 462.309(2) to surface the space between the rails at the aforementioned crossing on Watkins Road, as well as for a distance outside of the rails of at least one foot, with a material that shall be as durable and as smooth as that adjacent portion of Watkins Road.

9. On September 17, 2020, Defendant, Grand Trunk, owed Plaintiff, Chelsea Conklin, a statutory duty under Michigan law pursuant to MCL § 462.309(2) to surface the space between the rails at the aforementioned crossing on Watkins Road, as well as for a distance outside of the rails of at least one foot, in reasonable conformance with the configuration of that portion of Watkins Road located beyond one foot from the rails.

10. Defendant, Grant Trunk, breached this duty it owed to Plaintiff, Chelsea Conklin, including but not limited to the following ways:

- a. by failing on or before September 17, 2020, to maintain, renew, and repair that portion of Watkins Road that lies between the rails of the aforementioned public crossing as well as at least one foot of that portion of Watkins Road that lies outside the rails in violation of MCL § 462.309(1);
- b. by failing on or before September 17, 2020, to surface the space between the rails at the aforementioned crossing on Watkins Road, as well as for a distance outside the rails of at least one foot, with a material that was durable and as smooth as that adjacent portion of Watkins Road in violation of MCL § 462.309(2);
- c. by failing on or before September 17, 2020 to surface the space between the rails at the aforementioned crossing on Watkins Road, as well as for a distance outside of the rails of at least one foot, in reasonable conformance with the configuration of that portion of Watkins Road located beyond one foot from the rails in violation of MCL § 462.309(2).

11. The above-described acts constitute negligence of the part of the Defendant, Grand Trunk, and were and are a direct and proximate cause of the injuries and damages sustained by Plaintiff, Chelsea Conklin, including but not limited to:

- a. Multiple pelvis fractures;
- b. Fractured tailbone;
- c. Fractured right elbow;
- d. Multiple stones/pebbles lodged in skin of the right hand/palm;
- e. Severe bruising and burns;
- f. Several lacerations;
- g. Medical expenses;
- h. Pain, suffering, mental distress, and loss of enjoyment of life, past, present, and future; and
- i. Loss of earnings and loss of earning capacity, past, present, and future.

12. Plaintiff, Chelsea Conklin's injuries are objectively manifested and have resulted in a serious impairment of one or more important body functions which affect her ability to perform her normal activities and her general ability to lead her normal life.

COUNT II – PUBLIC NUISANCE

13. Plaintiff incorporates by reference paragraphs 1-12 by reference as if fully restated herein.

14. On September 17, 2020, and for a considerable period of time prior thereto, the aforementioned public grade crossing over Watkins Road in Calhoun County, Michigan which contained a set of railroad tracks owned by Defendant,

Grand Trunk, was in a state of disrepair in that the rails and the pavement immediately adjacent to the rail at said public grade crossing were unreasonably and unsafely at different levels.

15. This state of disrepair at the aforementioned public grade crossing on Watkins Road on September 17, 2020, constituted a public nuisance in that it created a condition which interfered with the safe travel by members of the general public, such as Plaintiff, Chelsea Conklin.

16. On September 17, 2020, and for some period of time prior thereto, Defendant, Grand Trunk, had the ability to abate the public nuisance created by the different levels between the rail and the immediately adjacent pavement, but unreasonably failed to do so.

17. The above-described public nuisance created and controlled by Defendant, Grand Trunk, was and is a direct and proximate cause of the injuries and damages sustained by Plaintiff as aforementioned in this complaint.

18. The harm suffered by Plaintiff, Chelsea Conklin, as hereinbefore described because of the public nuisance created and controlled by Defendant, Grand Trunk, is different from the harm suffered by other members of the public who are subject to the different levels between the pavement and the rail when they are exercising the right common to the general public to travel on Watkins Road through the aforementioned public grade crossing.

WHEREFORE, Plaintiff, CHELSEA CONKLIN, requests judgment against Defendant in an amount to which this Court deems her entitled, consistent with the law and evidence, together with interest, costs, and attorney fees so wrongfully incurred.

Respectfully Submitted,

SMDA, PC

/s/ Darren K. Legato
PHILLIP S. SERAFINI (P45085)
DARREN K. LEGATO (P77203)
Attorneys for Plaintiff
44444 Mound Road, Suite 100
Sterling Heights, MI 48314
(586) 264-3756

Dated: May 12, 2023

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, by and through her attorneys, **SERAFINI, MICHALOWSKI, DERKACZ & ASSOCIATES, P.C.**, and respectfully demands a Trial by Jury.

Respectfully Submitted,

SMDA, P.C.

/s/ Darren K. Legato
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